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DEPARTMENT OF HUMAN SERVICES  
MAINE PUBLIC ASSISTANCE MANUAL

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## FAIR HEARINGS/ADMINISTRATIVE HEARINGS

GENERAL RULE: A TANF or PaS household has an opportunity for a fair hearing when it disagrees with actions affecting their benefits. Any request for a hearing must be made within 30 days of the date of action. The Department may waive time limits. Requests for hearings may be made orally or in writing at the Regional Office or at the Central Office. All decisions of fair hearing officers are binding on the Department with the exception of cases involving an Order of Reference in which case the Commissioner reserves the right to make the final decision.

NOTE: Individuals who are dissatisfied with any action will upon request be given the opportunity to discuss their case with the immediate supervisor. The household will be advised that this meeting with the supervisor is optional and will not delay or replace the fair hearing. The basis for this meeting will be a review of the case situation to determine any available resolution of the problem.

## Time Limits on Hearings

The 30 day time limit on requesting a hearing may be extended at the discretion of the Department for one of the following reasons:

1. the recipient has registered a prior complaint on the same action
2. the recipient was unable to request earlier due to circumstances beyond their control

The decision to extend the request deadline is made by the Administrative Hearings Unit. A fair hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients (mass changes) unless the reason for the request is incorrect budget computation.

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FAIR HEARINGS

The Department has 60 days from the date of the initial request to hold the hearing, render the decision and notify the household. Decisions will be implemented promptly.

NOTE: When an Order of Reference is requested the time period is extended to 90 days (See Administrative Hearings Manual, Chapter VI, Section B, page 5).

NOTE: There may also be an extension of this 60 day time limit in the instance when a continuance is requested.

Departmental Responsibilities on Hearing Requests

1. Provide documents and records requested by the individuals or their representatives,
2. Advise the individual that they may present their own case or may have the aid of others including legal counsel,
3. Advise the individual of legal services available.
4. Provide the individual with adequate opportunity to:
  - a. examine the contents of the case file and all documents and records to be used by the Department at the hearing at a reasonable time before the date of the hearing as well as during the hearing,
  - b. present witnesses in their own behalf,
  - c. subpoena witnesses,
  - d. establish pertinent facts,

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FAIR HEARINGS (cont.)

- e. advance any arguments without undue interference,
- f. confront and cross-examine adverse witnesses.

Denial/Dismissal

The Administrative Hearings Unit cannot deny or dismiss a recipient's or applicant's hearing request unless:

- 1. the request is not received within 30 days of the action;
- 2. the request is withdrawn by the individual or their representative in writing;
- 3. the individual or their representative fails to appear at the scheduled hearing, and does not present evidence that their absence was beyond their control;
- 4. the request is where the sole issue is one of State or Federal law requiring automatic grant adjustments for classes of recipients.

Continuation of Benefits

When a TANF or PaS household requests a hearing within 10 days of the date of the termination or reduction notice, benefits will be restored to the immediate prior amount unless the household waives restoration of benefits.

The continuation of benefits may be terminated if the hearings officer decides the sole issue is one of policy or if other changes occur which effect the grant following the request for a hearing.

When the hearing request is not made within 10 days, benefits must be reduced or terminated, as stated in the notice.

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FAIR HEARINGS (cont.)

Notification of Hearing

The time, date and place of the hearing must be arranged taking the convenience of the household into consideration. Written notice must be provided at least 10 days prior to the hearing. The notice shall:

1. give the time, date and place of the hearing;
2. give the address and telephone number of the Administrative Hearings Unit;
3. explain that the request shall be dismissed if the household or its representative fails to appear without good cause;
4. include the hearing procedures;
5. include the purpose of the hearing;
6. include the rights to present evidence, cross-examine opposing witnesses, be represented by legal counsel, to subpoena witnesses, and to have the hearing rescheduled or continued for good cause;
7. include the rights to judicial review under Maine Rule 80C if dissatisfied with the results of the hearing.

Consolidation of Hearings

TANF and PaS Administrative Disqualification Hearings may be combined with a fair hearing or a Food Stamp Disqualification Hearing, when the factual issues arise out of the same or related circumstances, and the individual receives prior notice that the hearings will be combined. If hearings are combined, the time frames for conducting Administrative Disqualification Hearings will be followed unless the household waives the 30 day notice requirement for a disqualification hearing. (Explained under Intentional Program Violation.)

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## FAIR HEARINGS (cont.)

### The Hearings Officer

Hearings are conducted by a Department hearing officer. The hearing officer:

1. administers oaths to all witnesses;
2. ensures that all relevant issues are considered;
3. requests, receives, and makes part of the record, all necessary evidence;
4. regulates the hearing consistent with due process;
5. records proceedings for filing;
6. renders a decision based on evidence or testimony presented.

### Attendance At the Hearing

The hearing must be attended by a representative from Eligibility Staff as well as a representative from the agency responsible for the action under appeal, if different. Participation could involve representation from ASPIRE-TANF or DSER. There must also be at least one TANF or PaS household representative or the request for a hearing will be considered abandoned by the assistance unit.

### Household's Rights:

1. The TANF or PaS household will be given an opportunity, upon request, to examine all evidence at a reasonable time before the hearing, as well as at the hearing. The contents of the case file will be made available.

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FAIR HEARINGS (cont.)

EXCEPTION: The following will not be disclosed:

- a. names of persons who have provided information about on the household and want to remain anonymous;
- b. information pertaining to pending criminal prosecution;
- c. information that is protected from release, such as IEVS information.

- 2. They may present the case itself or have it presented by legal counsel or other person.
- 3. They may bring witnesses.
- 4. They may advance arguments without undue interference.
- 5. They may submit evidence to establish all relevant facts and circumstances in the case. (When the hearing involves medical issues, a medical assessment other than that of the person involved in the original decision may be requested by the household at the expense of the agency.)
- 6. They may subpoena witnesses.

The Hearing Decision

The decisions of the Hearings Unit must comply with Federal and State law and regulations, and be based on the hearing record. This record must be available, upon request, to the TANF or PaS household or its representative at any reasonable time for copying and inspection at no cost to the client.

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## FAIR HEARINGS (cont.)

Decisions of hearings officers are binding on the Department with the exception of cases involving an Order of Reference where the Commissioner reserves the right to make the final decision.

Within 5 days of the decision by the hearing officer, a copy of the decision, its basis, and the TANF or PaS household's rights to judicial review under Maine Rule 80C, will be mailed to the client.

In situations where the benefits have been continued at the previous level and the decision is that the Department was correct in its action, an overpayment will be established for the additional benefits received from the date of the change to the date of the adjustment after the hearing.

In situations where the benefits have not been continued at the previous level and the decision is that the Department was not correct in its action, a corrective payment shall be made for the period specified in the hearing decision.

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## TYPES AND METHOD OF PAYMENTS

GENERAL RULE: The TANF or PaS payment received by an individual may be restricted or unrestricted. State law at 22 MRSA, §3766 states a creditor cannot attach any portion of this payment.

A regular payment is unrestricted and gives the individual the right to be responsible for and free to select, purchase and pay for goods and services.

A restricted payment gives the agency permission to direct payment to a 3rd party. Restricted payments are limited to:

1. Vendor Payment: a TANF or PaS payment made directly to a landlord, a utility, or an other vendor of goods and services. Requests for vendor payments must be made in writing by the recipient. The agency will confirm in writing to the recipient when and where payment(s) will be sent. A request for change must come from the recipient.

EXCEPTION: While most vendor payments are voluntary payments which are requested by the recipient, minor parent or pregnant minor must receive TANF or PaS benefits in the form of vendor payments unless they are married minors living with spouses. In these cases, the minor parent or pregnant minor will receive direct TANF or PaS payments. These mandatory monthly TANF or PaS vendor payments will be made first to pay for rent and utility payments.

When a request for a vendor payment or a change in vendor payment is received by the 10th, it is effective the next month. Requests received after the 10th are effective not later than the month following the next month's payment.



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TYPES AND METHOD OF PAYMENTS (cont.)

A vendor payment will not be authorized when the requested payment is more than the grant amount. When a vendor payment is less than the grant amount the balance will be sent to the recipient unless the recipient is a minor parent described at item 2. b.

NOTE: When either the vendor payment or the payment to the third Party payee is less than \$5, they must be adjusted to comply with State law requiring a \$5 minimum for all checks issued.

2. Protective payment: a TANF or PaS payment made to a guardian, conservator, or other third party on behalf of a recipient. The third party payee is responsible for the accounting of the disbursement of funds to the agency.

A protective vendor payment shall be made when:

- a. there is non-compliance with ASPIRE-TANF or DSER. The agency have final approval in the selection of a third party payee. (See ASPIRE-TANF policy at Chapter II, and DSER policy at Chapter II .)
- b. a minor parent or pregnant minor is head of the TANF or PaS household. No TANF or PaS benefit will be sent directly to the minor parent or pregnant minor. All TANF or PaS benefits will be sent in the form of vendor payments:
  - shelter payments are sent directly to vendors.
  - utility payments (preferably a standard payment plan) are sent directly to vendors.
  - balances remaining are sent to third party protective payees who must manage and use the money on behalf of the minor parent and their children.

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TYPES AND METHOD OF PAYMENTS (cont.)

In situation b, the agency will have final approval in the selection of a third party payee. The payee must be a responsible adult who can make responsible financial decisions. Additionally, the payee must agree to demonstrate to the agency (at any time) how the protective payments have been spent on behalf of the minor parent and their children.

- c. there is a court appointed guardian or conservator. The Eligibility Worker is responsible for referring to the Bureau of Child and Family Services reports of persistent mismanagement of the TANF or PaS payment which threatens the health and safety of a child. Children not properly fed, clothed, sheltered or other lack of care is evidence of mismanagement. This referral process may lead to court action resulting in the appointment of a guardian or conservator.

Prior to the effective date of the intended change, the recipient must be notified in writing.

Procedure for Payment to a Vendor/Protective Payee

The third party payee name, address and amount will be entered into the computer.

The check will be paid to the order of the third party payee on behalf of the client. The stub must reflect this information.

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INCOME AND ELIGIBILITY VERIFICATION SYSTEM (IEVS)

SUBJECT: Types of Information Required and Source Agencies

GENERAL RULE: Federal regulations require that each state maintain and use an Income and Eligibility Verification System (IEVS). Wage and benefit information is requested from the following sources:

1. Wage information maintained by the Maine Employment Security Commission (MESC);
2. Information about net earnings from self-employment, wages, and payments of retirement income maintained by the Social Security Administration (SSA) - "BEERS";
3. Federal retirements and survivors, disability, SSI and related benefit information available from SSA - "BENDEX" AND "SDX";
4. Unearned income information from the Internal Revenue Service (IRS);
5. UIB claim information from MESC.

Information will be requested from the appropriate agencies about members of the household as follows:

1. Quarterly, from MESC on wages. Such requests must include all assistance units which participated in any month of the corresponding quarter.
2. Monthly, from SSA data bases and not later than the second month of the eligibility period.
3. Annually, from IRS for all current recipients. This request must be made as soon as practicable after the latest year's data is available from IRS.

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INCOME AND ELIGIBILITY VERIFICATION SYSTEM (IEVS)

4. Weekly, from MESC on UIB benefits for all participating assistance units.

Verification: Action must be taken without independent verification based on Social Security and SSI benefit information from SSA and UIB information from the Maine Employment Security Commission obtained through IEVS. This information is considered verified upon receipt.

NOTE: When it appears that the IEVS information about a particular household is questionable, the information must be considered unverified and must be independently verified before taking action to terminate, deny, or reduce benefits. Such unverified information is:

1. unearned income from IRS;
2. wage information from the Maine Department of Labor and SSA (BEERS);
3. questionable information as noted above.

Verification shall be obtained by means of contacting the household and/or the appropriate asset or income source.

The household must be informed in writing of the information the Department has received.

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INCOME AND ELIGIBILITY VERIFICATION SYSTEM (IEVS)

Worker Responsibilities

GENERAL RULE: Case action on IEVS information about recipient households must be complete within 45 days of receipt of that information.

Case action includes:

1. Review of the information, and comparison of it to information in the case record.
2. For all new or previously unverified information received, contact with the household and/or the appropriate assets or income source to resolve discrepancies.
3. When discrepancies warrant, action to begin reduction of benefits or termination of eligibility (advance notice sent).

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Appropriate case action and dates must be noted on the IEVS document and filed in the case record with the exception of documents containing IRS information. All documents generated from IRS source data must be destroyed once case action is completed. A master file of IRS documents will be maintained at Quality Control. BEERS data contains IRS information and is subject to the same security.

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## OVERPAYMENTS

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**GENERAL RULE:** When ever federal, state, or support money is issued incorrectly as a result of an agency or client error, an overpayment shall be calculated for each month federal, state or support money was misdirected. The amount of the overpayment is the difference between what was received and what should have been received.

Misdirected federal, state, and support money includes, but is not limited to, benefits issued as:

- Temporary Assistance to Needy Families (TANF)
- Parents as Scholars (PaS)
- Refugee Cash Assistance (RCA)
- Alternative Aid Assistance (AAA)
- Emergency Assistance (EA)
- Transitional Child Care (TCC)
- TANF or PaS Child Care Disregard
- TANF or PaS Child Care Support Services
- Transitional Transportation (TT)
- Pass Through (Pass Thru)
- TANF Supplemental Payment (GAP)
- Excess Child Support (also, alimony, childcare)
- ASPIRE Support Services
- Other money issued

Whenever there is a TANF or PaS recalculation, the Eligibility worker shall consider the possibility of a TANF Supplement GAP overpayment.

NOTE: A TANF or PaS overpayment due to a recipient keeping child support shall be calculated minus the Pass Thru.

NOTE: When it appears that an overpayment resulted from a willful client error, the Eligibility Worker must proceed with steps described in Intentional Program Violation.

When overpayments are due to incorrect Pass Thru, Excess Child Support or Alimony payments (Excess over), or other misdirected payments (payment to the wrong person), the Eligibility Specialist will be notified by DSER/Staff.

When overpayments are due to incorrect ASPIRE , Support Services, or other misdirected payments, the Eligibility Specialist will be notified of the overpayment amount by ASPIRE Staff.

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It is the Eligibility Specialist's responsibility to correct errors relating to all misdirected federal, state, or support monies. The Eligibility Specialist must attempt to recover overpaid money from the recipient by sending notice which explains the cause of the overpayment a choice on how the overpayment can be repaid, and the right to a hearing.

NOTE: All types of overpayments are subject to adequate noticing which includes fair hearing rights.

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## OVER PAYMENTS

NOTE: Repayment shall take place through direct payment or benefit reduction and will be recovered from:

- any assistance unit which was overpaid,
- any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or
- any individual members of the overpaid assistance unit whether or not currently a recipient.

### Priority for Recovering Overpayments

1. The agency is required to first seek recovery from the caretaker relative who was a member of an overpaid assistance unit (or the caretaker relative's current assistance unit).
2. If the caretaker relative cannot be located, is deceased, or was not a member of the overpaid assistance unit, the agency must seek recovery from other members of the overpaid assistance unit.

Other:

The Federal Government requires the collection of AFDC (Aid to Families with Dependent Children) overpayments before TANF overpayments.



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## OVERPAYMENTS (cont.)

## Recovery

Overpayments, regardless of their cause, must take place over as short a period of time as possible without recovering more than the maximum recovery amount. The maximum recoupment of overpayments from a recipient eligible for maximum TANF or PaS payment is 10% of the payment standard, and for those eligible for less than the maximum TANF or PaS, 30% of the payment standard.

Basic Grant for Assistance Units: (adult included)

	1	2	3	4	5	6	7	8
10%	23	36	48	61	73	85	98	110
30%	69	108	144	183	219	255	294	330

Basic Grant and Special Needs for Assistance Units: (adult included)

	1	2	3	4	5	6	7	8
10%	28	41	53	66	78	90	103	115
30%	84	123	159	198	234	270	309	345

Special Needs Only:

10%	5
30%	15

Recoupment of overpayments will be made by direct repayment or through a reduction in the amount of TANF or PaS benefits.

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OVER PAYMENTS (cont.)

NOTE: Households can pay faster than the 10% or 30% rate by written request.

NOTE: An Eligibility Worker's decision to recover overpayments at a rate of less than the maximum amount must be explained clearly in the case record.

NOTE: When the recoupment of an overpayment reduces an TANF or PaS payment to under \$5, the amount of the recoupment must be adjusted to comply with State law which requires a \$5 minimum on checks issued.

If an applicant with an outstanding overpayment becomes eligible, recoupment must take place considering the current payment amount.

Recovery on Closed Cases

When a case is closed and there is an outstanding overpayment, there must be an automatic referral to Fraud, Investigation and Recovery (FIR) staff who will contact the former recipient regarding an agreement to repay. FIR may also attach State Income Tax returns to offset the remaining debt.

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## INTENTIONAL PROGRAM VIOLATION

**GENERAL RULE:** A determination of an intentional program violation (IPV) is made either through a court of law or a hearing process. The hearing process is known as an Administrative Disqualification Hearing (ADH). Sanctions are imposed on individuals found to have committed an IPV.

### Definition

An IPV is an action by an individual for the purpose of establishing or maintaining the family's eligibility for TANF, PaS or any other Bureau program or service such as, Emergency Assistance, Alternative Aid Assistance, Transitional Childcare, Transitional Transportation, ASPIRE support services and any other misdirected money, for increasing or preventing a reduction in the amount of the grant, which stem from the following intentional act:

1. false or misleading statements or misrepresentations, concealment, or withholding of fact, or

**EXAMPLE:** An individual intentionally states no income on an application, review or change report form when there is income in his household.

2. an act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

**EXAMPLE:** An individual gets a baby-sitter to lie about the amount of child care expense.

**EXAMPLE:** An individual signs a forgery affidavit requesting that an TANF OR PAS check be replaced when they signed and cashed the original.

### Pre-hearing Review and Initiating an ADH

The Department must review the evidence at hand to determine if an allegation that an individual has committed an IPV is valid. When the Eligibility Specialist believes that documentary evidence substantiates the allegation, the Eligibility Specialist should:

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INTENTIONAL PROGRAM VIOLATION (cont.)

1. initiate an Administrative Disqualifications Hearing, and
2. correct the on-going benefits when they are wrong.

NOTE: Continued eligibility and benefit level must be determined as for any other household pending the hearing.

NOTE: A fair hearing request resulting from the benefit adjustment can be combined with the ADH. See Consolidation of Hearings.

NOTE: Collection activities on overpayments do not begin until a determination has been made as to whether or not an IPV has occurred. See Absence of IPV and Finding of IPV.

Non-Referrals

When the following situations occur, do not refer suspected IPV to an ADH:

1. a prior alleged IPV referral is at the Attorney General's office,
2. a case has been through the court system and was dismissed or determined not guilty, or
3. the alleged IPV occurred prior to 10/4/93 and did not continue thereafter.

NOTE: Alleged Intentional Program Violations occurring on 10/4/93 and thereafter can be referred to an ADH even when the alleged IPV began prior to that date.

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INTENTIONAL PROGRAM VIOLATION (cont.)

Time Limits

The Department has 90 days from the date the hearing notice is received to hold the hearing, render the decision, and notify the household. However, failure to comply with this time limit will not bar a finding that the person committed an IPV.

Scheduling of the ADH

Written notice to the person accused of the violation must be mailed at least 45 days in advance of the scheduled hearing in order to assure that the notice is received 30 days prior to the hearing. The notice, a copy of the hearings procedures, and the opportunity to waive the right to a hearing is mailed "CERTIFIED/RETURN RECEIPT REQUESTED/RESTRICTED DELIVERY"

The notice must contain:

1. The date, time, and place of hearing.
2. The charges against the individual believed to have committed the IPV.
3. A summary of the evidence, and how and where it can be examined.
4. A warning that if the accused individual fails to appear for the hearing without good cause, the decision will be based on the evidence provided by the Eligibility Worker at the hearing.
5. A statement that the accused individual may request a postponement of the hearing provided that the request is made to the Administration Hearings Unit at least 10 days prior to the date of the scheduled hearing.

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## INTENTIONAL PROGRAM VIOLATION (cont.)

If the individual fails to appear and later requests that the hearing be rescheduled, they must present good cause for failure to appear within 10 days of the date of the hearing.

6. A warning that if the hearing decision determines that an intentional program violation has occurred, a disqualification period will be imposed according to the appropriate schedule on page 28 of this chapter.
7. A statement that the State may still prosecute the household member in civil or criminal court action and collect the overissuances.
8. A listing of individuals or organizations that provide free legal representation to individuals alleged to have committed an IPV.
9. A statement that the accused individual has the right to remain silent concerning the charges and that anything said or signed by the individual concerning the charges may be used in a court of law.
10. An explanation that the accused individual may waive their right to appear at an ADH. (See Waiver.)

## Returned Notice

When the notice is returned marked "undelivered" or accepted by someone other than the addressee, personal service shall be arranged by any other method which provides proof of receipt at least 30 days to the hearing.

(This means that the local DHS office must request that the ADH be rescheduled allowing another 45 days.)

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### INTENTIONAL PROGRAM VIOLATION (cont.)

NOTE: A personal service restricts delivery of the notice to the addressee and guarantees proof of receipts. Examples include:

1. Certified Mail with "Return Receipt Requested and Restricted Delivery".
2. Delivery by a Sheriff's Department with "Return Receipt Requested and Restricted Delivery".
3. Delivery by a Detective Agency with "Return Receipt Requested and Restricted Delivery".

When the notice is returned marked "refused", it must be assumed that the addressee received notice.

### Failure to Appear

Should the accused individual fail to appear at the hearing, and the notice was received or refused at least 30 days prior to the hearing date, the hearing will still be conducted. The hearing officer will base the decision on the evidence presented by the Department.

When an individual fails to appear at the scheduled hearing, but notifies the Administrative Hearing Office of the reason for not attending not more than 10 days after the hearing date, they may claim good cause for the failure to appear.

Good cause for failure to appear is defined as an emergency circumstance that is beyond the control of the individual and that prevents the individual from being able to appear at the hearing.

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INTENTIONAL PROGRAM VIOLATION (cont.)

NOTE: The following situations do not constitute good cause:

1. Forgetting about the hearing
2. Lack of transportation, unless the lack of transportation was the result of an emergency situation such as the individual's vehicle breaking down on the way to the hearing.

Postponement of Hearing

An individual may request a postponement of the scheduled hearing if the request is made to the Administrative Hearing Office at least 10 days in advance of the scheduled hearing.

Only the Hearing Officer is authorized to postpone a hearing. When the hearing is postponed, the time limits for processing will be extended for the number of days between the initial scheduling and rescheduling not to exceed 120 days.

Withdrawal of the Request for an ADH by the Department

When, at any time prior to the date of an Administrative Disqualification Hearing, the Department feels that there is insufficient evidence on which to conduct a hearing, the Administrative Hearings Officer and the individual should be contacted immediately to notify them that the hearing has been canceled and that the case had been administratively withdrawn.

Consolidation of Hearings

Bureau Program or Service Administrative Disqualification Hearings may be combined with a fair hearing or a Food Stamp Disqualification Hearing, when the factual issues arise out of the same or related circumstances, and the individual receives prior notice that the hearings will be combined. If hearings are combined, the time frames for conducting Administrative Disqualification Hearings will be followed unless the household waives the 30 day notice requirement for a disqualification hearing.



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INTENTIONAL PROGRAM VIOLATION (cont.)

Waivers

When a waiver of the right to an Administrative Disqualification Hearing (ADH) is signed by the individual, the appropriate disqualification penalty is imposed, even when there is no admission to the charges.

The waiver notice contains the following information:

1. The date by which the signed waiver must be received by the local office of the Department.

NOTE: This date is the date of the hearing. This allows individuals to waive their right to an ADH at the hearing.

2. A blank for the signature of the accused individual and the head of household along with a statement that the head of household must also sign if the accused is not the head of household.
3. A statement that the individual has the right to remain silent concerning the charges and that anything said or signed by the individual concerning the charges may be used in a court of law.
4. The fact that the signed waiver will result in disqualification for the appropriate period of time even if the individual does not admit to the charges.
5. An opportunity for the person either to admit the charges or to waive the hearing without admitting to the charges.

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## INTENTIONAL PROGRAM VIOLATION (cont.)

### The Administrative Disqualification Hearing

The Eligibility Worker (or Supervisor when the Eligibility Worker is absent) is responsible for representing the agency at the hearing.

The individual accused of IPV or a person they designate in writing to represent them may review the case record and/or represent them at the hearing. The statement designating the representative must be kept in the case record and a copy must be forwarded to the Administrative Hearing Office. The designated representative will receive a copy of all correspondence regarding the hearing proceedings.

During the hearing, the individual has the right to:

1. examine the contents of the case record which includes all documents and records to be used by DHS at the hearing.
2. bring witnesses to present testimony on their behalf during the hearing.
3. present their case or have it presented by legal counsel or other person.
4. advance arguments without undue interference.
5. question or refute any testimony or evidence including the opportunity to confront and cross examine adverse witnesses.
6. submit evidence to establish all pertinent facts and evidence in the case.

### Conducting of the Hearing

The Hearing Officer will conduct the hearing in accord with the pertinent statutes and regulations. The Hearing Officer will:

1. administer the oath to all witnesses who will present testimony.

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## INTENTIONAL PROGRAM VIOLATION (cont.)

2. request, receive, and make part of the record all evidence determined necessary to decide the issues being raised.
3. insure that an unrepresented individual feels at ease and assist in presenting facts relevant to his/her defense.
4. advise the accused individual of his/her right to refuse to answer questions during the hearing.
5. regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing.

## Standard of Evidence

The Department will present evidence that the individual:

1. made a false or misleading statement or misrepresentation, concealed facts, or withheld facts, or acted with the intent to mislead, misrepresent, conceal, or withhold facts or propound a falsity,
2. did it intentionally, and
3. did it in order to receive Program or Service benefits to which they were not entitled.

## Decision

The Hearing Officer shall, based upon clear and convincing evidence in the hearing record, issue a written decision stating whether or not the accused individual knowingly committed an IPV, specify the reasons for the decision, and identify the supporting evidence and regulations as defined earlier in this chapter.

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## INTENTIONAL PROGRAM VIOLATION (cont.)

### Notice of ADH Decision

The Administrative Hearings Officer will issue a decision within 90 days of the date of the notice scheduling the ADH unless the hearing has been rescheduled and the time frames extended. The Administrative Hearings Officer will send a copy to the local DHS office.

### Absence of IPV

When the AHO determines the facts do not support an IPV or a court determines the client is not guilty, the Eligibility Worker:

1. enters the overpayment on the computer, and
2. follows procedures for collection as a client unintentional error (or agency error).

### Finding of IPV

When the AHO determines that an IPV occurred, the Eligibility Worker:

1. refers the case to the Fraud Investigation and Recovery (FIRU) for collection of the overpayment and for potential prosecution by entering the overpayment on the computer as an intentional error,

NOTE: When the AG's office considers a case for prosecution, Eligibility staff will be asked to recompute the overpayment allowing work related disregards because the courts do not recognize the sanctions. The Department will recover both the court-ordered overpayment and the additional overpayment which results when sanctions are applied.

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## INTENTIONAL PROGRAM VIOLATION (cont.)

2. provides the client with written notification of the Disqualification sanctions before they are imposed, and the disqualification notice will note the date the Disqualification period begins and ends, and
3. imposes the sanctions, and
4. establishes the overpayment.

## Disqualifying Sanctions/Penalties

The following periods of Disqualification will be imposed against the individual who committed the violation:

If the offense occurred before 9/1/97:

1. Six months for the first violation.
2. Twelve months for the second violation.
3. Permanently for the third violation.

If the offense occurred on or after 9/1/97:

1. One year for the first violation
2. Two years for the second violation
3. Permanently for the third violation

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NOTE: Sanctions will always begin no later than the second month following the date the household member is sent written notification of the hearing decision or a waiver to forfeit an administrative hearing is signed. The disqualification period for individuals determined to have committed a program or service intentional program violation will not be postponed when households are ineligible for benefits.

Actions taken as the result of an IPV require adequate and timely notices.

The sanctioned individual's needs will not be included in the standard of need when determining eligibility and amount of assistance for the remaining family members.

The sanctioned individual's income and assets will be considered. The following disregards will be applied to the income:

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INTENTIONAL PROGRAM VIOLATION (cont.)

1. an amount equal to the standard of need for the support of any non-categorically eligible individuals living in the same household and claimed by the sanctioned parent as dependents for IRS purposes;
2. any actual payments of alimony or child support to persons not living in the home;
3. any actual payments being paid by the sanctioned parent to individuals not living in the home, but who are claimed or could be claimed as dependents for IRS purposes.

Duration of Penalty

No further administrative appeal procedure exists after an Administrative Disqualification Hearing decision finds an IPV. The determination of IPV made by an ADH Officer cannot be reversed by a fair hearing decision.

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INTENTIONAL PROGRAM VIOLATION (cont.)

The individual, however, is entitled to seek relief on the findings of IPV in a court having appropriate jurisdiction, but in no event shall the duration or the period for which such penalty is imposed be subject to review by the Hearing Officer.

Applicability of Penalty

A disqualification penalty imposed on an individual by one IV-A State agency may be used in determining the appropriate Disqualification penalty for the individual by another IV-A State agency. When an individual with a prior violation moves from one state to another and has been found to have committed an Intentional Program Violation, the Department will impose the penalty based on the number of such violations committed in other states.

In cases where a Disqualification penalty and other sanctions or penalties apply:

1. The Disqualification penalties in this section must be imposed subsequently to, and cannot be substituted for, any other sanctions or penalties which may be imposed by law for the same offenses; and
2. The Disqualification penalties imposed under IPV only affect the individual concerned. Other members of the Assistance Unit cannot be substituted. .

Collection of the Overpayment

There is no distinction between collections of intentional overpayments or unintentional overpayments. Refer to the Overpayments section for procedures.

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UNDERPAYMENTS:

GENERAL RULE: Underpayments are benefit or service payments issued for less than the amount the assistance unit should have received.

The Department shall take action within 30 days from when the underpayment becomes known to correct the payments to current or former clients. The corrective payment shall not be counted as income or asset in the month it is received nor in the month following its receipt.

Corrective payments are a means of rectifying an agency error, delay, or as a result of court order. They are not made when the client fails to notify the agency of changes.

Corrective payments shall be made for a the entire period of error.

NOTE: If an assistance unit has both an underpayment and an overpayment one shall be offset against the other before issuing a corrective payment.



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Lost, Stolen, Destroyed or Forged Checks

GENERAL RULE: When a recipient reports a check has been lost, stolen or destroyed prior to cashing, the Department has the responsibility to replace it with reasonable promptness. In the instances when there is reason to believe there has either been a forgery or duplicate checks have been received and cashed by the recipient, the following procedures have been established.

Lost, Stolen or Destroyed

1. The worker checks the returned check list on or after the 12th of the month. If the check has been returned to the Division of Financial Services then the address is corrected by the Eligibility Worker on the computer and the Worker requests is made for remailing.
2. If the name is not on the returned check list, the Worker does the following:
  - a. Completes a SWIM-050 (Stop-Payment). The original is sent to the Division of Financial Services. The copy is for the record.
  - b. Completes a SWIM-051 (Application for a Duplicate Check). The original is sent to the Division of Financial Services. The copy is for the record.

NOTE: Both the SWIM-050 and the 051 are sent to the Division of Financial Services together.

Forgeries

When the photocopy of the original check is sent to the worker, the Worker has to meet face-to-face with the recipient to determine whether or not the signature is the recipient's. If the recipient states it is not, then 2 separate original Forgery Affidavits will be completed (SWIM-052), one original is sent to FIR and the second original is sent to Division of Financial Services. A copy is retained for the record. This initiates an investigation to determine who cashed the check.

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### Lost, Stolen, Destroyed or Forged Checks (cont.)

If the recipient agrees that the signature on the original check is theirs, the worker will initiate collection activities or refer for fraud.

### Exchanging a Check

When a household presents a mutilated check which a bank refuses to cash, the worker will take the following steps:

1. Complete a SWIM-050 (Stop Payment).
2. Complete a SWIM-051 (Application for a Duplicate Check).
3. Void the mutilated check.
4. Forward the original forms and the mutilated check to the Division of Financial Services. A copy is retained for the record.

### Agency Error/Emergency Situation

When TANF or PaS grants are reinstated after check selection because of termination caused by an agency error or when a fair hearing is requested timely but after check selection, the following procedure shall be required:

1. Upon request from the recipient the replacement check will be authorized within 3 to 5 working days from the determination that there is an emergency situation. Emergency is defined as follows:
  - a. The TANF or PaS check for the month will likely not be received until after the 5th business day of the month; and
  - b. As a result of the delay the TANF or PaS family may lose basic necessities. For example, the family may:
    1. be evicted from their home (e.g., there is an eviction notice and the grace period in which to pay the rent will expire; or

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## Lost, Stolen, Destroyed or Forged Checks (cont.)

2. be in default on a loan because of expiration of the period in which to make a payment on the household's automobile or other installment loan used to purchase a basic necessity; or
3. be faced with the expiration period in which to pay for a necessary utility and as a result the service will be shut off; or
4. suffer because of the inability to purchase a basic necessity.

Basic necessity is defined as shelter (housing and/or utilities), food, clothing, or essential medical care. In these situations, the recipient must be without their own resources to meet the need and there must be not other source of assistance available which is adequate to meet the emergency. These other sources do not include the Emergency Assistance Program or Energy Crisis Intervention Program because they are limited. The recipient shall be required to apply for General Assistance unless receipt of that assistance will require a household member to perform workfare.

When the Worker determines that an "emergency" exists, a request to issue an expedited replacement check will be made through the TANF and PaS Supervisor. The Worker may request verification from the recipient or others that the "emergency" exists. The check will usually be available within 3 to 5 business days after the TANF and PaS Program Director approves the request for expedited payment.